

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ERNEST S. ROBERTS, JR.,

Plaintiff,

v.

**UNITED STATES POSTAL SERVICE,
et al.,**

Defendants.

Civil Action No. 02-821 (RMC)

MEMORANDUM OPINION

This case represents the most recent effort by Plaintiff Ernest S. Roberts, Jr., to obtain workers' compensation benefits and disability retirement benefits for injuries allegedly caused when he was an employee of the United States Postal Service (USPS) twenty years ago. Mr. Roberts has diligently availed himself of the administrative process, with reviews, motions for reconsideration, re-filings based on new evidence, and the like, without success. He also initiated suit against the three named defendants in the United States District Court for the Southern District of Georgia, alleging violations of 5 U.S.C. §§ 8105, 8337, and 8347, which was dismissed for lack of subject matter jurisdiction on April 13, 2001.¹ *Roberts v. United States Postal Service, et al.*, CV400-305 (S.D. Ga. April 13, 2001) (*Roberts I*). The complaint before the Court is essentially the same complaint as was before the district court in Georgia with the addition of a constitutional claim for violation of due process rights under the Fifth and Fourteenth Amendments, and a claim for violation

¹Mr. Roberts initially appealed the decision of the Georgia District Court to the Eleventh Circuit, but withdrew his appeal on June 20, 2001. See Notice of Dismissal, 01-12752-B (11th Cir. June 20, 2001).

of a statutory mandate or prohibition under 5 U.S.C. § 8107(a). Mr. Roberts continues to seek past, present and future workers' compensation benefits and disability retirement benefits, with interest.

Pending before the Court is a Motion to Dismiss filed by the United States Postal Service, the United States Office of Personnel Management, and the United States Department of Labor Office of Worker Compensation Programs ("Defendants"). Because Mr. Roberts's claims were dismissed by the District Court for the Southern District of Georgia for lack of subject matter jurisdiction, and Mr. Roberts has failed to cure the jurisdictional defects in his complaint filed in this Court, his claims are barred by collateral estoppel. Therefore, Defendant's Motion to Dismiss is granted.

Legal Standard

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 42, 45-46 (1957). When challenging the sufficiency of a pleading's allegations of subject matter jurisdiction under FED. R. CIV. P. 12(b)(1), the standard of review is substantially the same as that used to evaluate FED. R. CIV. P. 12(b)(6) motions. *See Vanover v. Hantman*, 77 F. Supp. 2d 91, 98 (D.D.C. 1999). The court must accept as true all of the plaintiff's well-pled factual allegations and draw all reasonable inferences in favor of the plaintiff; however, the court does not need to accept as true the plaintiff's legal conclusions. *See Alexis v. District of Columbia*, 44 F. Supp. 2d 331, 336-37 (D.D.C. 1999).

In determining whether a complaint fails to state a claim, the court may consider facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which the court may take judicial notice. *See E.E.O.C. v.*

St. Francis Xavier Parochial School, 326 U.S. App. D.C. 67, 117 F.3d 621, 625 (D.C. Cir. 1997). Thus, the court may take judicial notice of matters of a general public nature, such as court records, without converting the motion to dismiss into one for summary judgment. See *Marshall County Health Care Auth. v. Shalala*, 300 U.S. App. D.C. 263, 988 F.2d 1221, 1226 (D.C. Cir. 1993); *Phillips v. Bureau of Prisons*, 192 U.S. App. D.C. 357, 591 F.2d 966, 969 (D.C. Cir. 1979).

Baker v. Henderson, 150 F. Supp. 2d 17,19 n.1 (D.D.C. 2001); see also *Veg-Mix, Inc. v. USDA*, 832 F.2d 601, 607 (D.C. Cir. 1987) (“[I]t is settled law that the court may take judicial notice of other cases including the same subject matter or questions of a related nature between the same parties.”) (citations omitted). The Court therefore takes judicial notice of the court records that Defendants attached to their motion to dismiss.²

Analysis

To the extent that Mr. Roberts would base jurisdiction in this Court on §§ 8105, 8337 or 8347 of Title 5 of the United States Code, or 28 U.S.C. § 1343, the District Court for the Southern District of Georgia has already ruled against him. That court held that it had no jurisdiction under the Federal Employees’ Compensation Act (FECA) or the Civil Service Retirement Act (CSRA) to hear workers’ compensation or retirement disability claims. The result is no different in a federal district court in the District of Columbia Circuit.

Defendants assert that the Georgia court's dismissal of Mr. Roberts's claim in *Roberts I* for

²In his Response in Opposition to the Motion to Dismiss (“Opposition”), Mr. Roberts noted that the exhibits that Defendants provided to the Court were unverified. Opposition at 6. In his Additional Response to Summary Judgment (“Additional Response”), Mr. Roberts stated that he does not contest the validity of the court records attached to Defendants’ motion. Additional Response at 11. Because there is no dispute as to the authenticity of the attached court decisions, and because the Court may, as Mr. Roberts has acknowledged, accept court documents as public record, Opposition at 6, the Court will not convert the Motion to Dismiss into a Motion for Summary Judgement.

lack of subject matter jurisdiction is *res judicata* to Mr. Roberts's current action. However, a dismissal for lack of jurisdiction is not an adjudication on the merits. *See* FED. R. CIV. P. 41(b); *Kasap v. Folger Nolan Fleming & Douglas, Inc.*, 166 F.3d 1243, 1248 (D.C. Cir. 1999). Defendants therefore cannot establish one of the four requisite elements for *res judicata*. *See Palsby v. Thompson*, 201 F. Supp. 2d 45, 48 (D.D.C. 2002) (in order to establish *res judicata*, the parties to the suit must be identical, a court of competent jurisdiction must have rendered a judgment, that judgment must have been a final judgment on the merits, and the cause of action in both suits must be the same).

Nevertheless, Mr. Roberts is precluded from relitigating his claims in this Court based on the narrower doctrine of collateral estoppel. Under the doctrine of collateral estoppel "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." RESTATEMENT 2D OF JUDGEMENTS § 27 (1982). "While a dismissal for lack of jurisdiction does not have a preclusive effect on the underlying cause of action, such a dismissal will 'preclude relitigation of the precise issue of jurisdiction that led to the initial dismissal.'" *Richard v. Bell Atl. Corp.*, No. 96-02168 (CRR), 1997 U.S. Dist. LEXIS 8614, at *5-6 (D.D.C. February 18, 1997) (quoting *GAF Corp. v. United States*, 818 F.2d 901, 912 (D.C. Cir. 1985); *cf. Nextwave Pers. Communications Inc. v. FCC*, 254 F.3d 130, 148 (D.C. Cir. 2001) ("if a court makes a substantive determination in order to arrive at a jurisdictional holding, the substantive determination can have issue preclusive effect so long as it was actually litigated and determined in the prior action") (internal quotations omitted); *Novell v.*

United States, 109 F. Supp. 2d 22, 24-25 (D.D.C. 2000) (determination underlying dismissal for lack of subject matter jurisdiction may not be relitigated in a subsequent case).

In *Roberts I*, the parties fully litigated the issue of whether a federal district court has jurisdiction over Mr. Roberts's claims arising under §§ 8105, 8337 or 8347 of Title 5. The Georgia court's final determination that a federal court does not have subject matter jurisdiction over the claims was essential to its judgement dismissing the action. Therefore, Mr. Roberts may not relitigate the issue of federal court jurisdiction over his claims unless he cures this jurisdictional defect. See *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1191-92 (D.C. Cir. 1983); *Keene Corp. v. United States*, 591 F. Supp. 1340, 1346 (D.D.C. 1984). As the Georgia court held, a federal district court can review OWCP's denial of workers' compensation only if Mr. Roberts can show a constitutional violation or a violation of a clear statutory mandate or prohibition. See *Roberts I*, at 15. Likewise, a federal district court can review OPM's denial of retirement benefits only when the case involves prohibited discrimination. See *id.* at 17. Mr. Roberts has not overcome the defects that precluded review in Georgia of his FECA and CSRA claims and his claims against the Postal Service merely by bringing his suit to the District of Columbia. See *Roberts I*, at 14-15, 17.³

³ As the Georgia court noted, appeals from OPM decisions are made to MSPB. Appeals from MSPB decisions are made only to the Federal Circuit unless the case involves prohibited discrimination. In holding that it did not have subject matter jurisdiction to consider Mr. Roberts's claims for retirement benefits, the *Roberts I* court held that "Plaintiff has not alleged either in his complaint or his response to Defendants' motion to dismiss that a claim of discrimination was raised in any of these earlier proceedings and Defendants' exhibits further demonstrate that such claims were never argued." *Roberts I* at 18. In this case, Mr. Roberts has not alleged that the underlying claim for retirement benefits involved prohibited discrimination. Therefore, this Court is bound by the decision of the Georgia court that it does not have subject matter jurisdiction to consider the claim for denial of retirement benefits.

The court in *Roberts I* also determined that Mr. Roberts did not identify any statutory grounds for jurisdiction over the United States Postal Service. Because he has not cured this

The instant complaint does contain allegations of constitutional violations, which were missing in the Georgia suit. Mr. Roberts alleges that he was denied due process in violation of the Fifth Amendment. *See* Count I, Compl. ¶ 192, Count II, Compl. ¶ 194, Count III, Compl. ¶ 197, Count IV, Compl. ¶ 200. However, these allegations do not state a cause of action under the Fifth Amendment and therefore Mr. Roberts has not cured the jurisdictional defect that the Georgia court found is *Roberts I.*⁴

The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1972) (citations omitted). The Fifth Amendment “only requires that a person receive his ‘due’ process, not every procedural device that he may claim or desire.” *Kropat v. Fed. Aviation Admin.*, 162 F.3d 129, 132 (D.C. Cir. 1998) (citations omitted). The complaint itself reveals that Mr. Roberts has received multiple opportunities to argue his case. Under FECA, he received a hearing before a hearing representative of the Office of Workers’ Compensation Programs (OWCP), he requested reconsideration, and he filed an appeal with the Employees’ Compensation Appeals Board. Under the CSRA, he requested reconsideration of the denial of disability retirement benefits by the Office of Personnel Management (OPM), appealed its denial to the Merit System Protection Board, and further appealed the denial to the Federal Circuit.

defect, Mr. Roberts is collaterally estopped as well from relitigating his claim against the Postal Service.

⁴ Mr. Roberts also advances a claim that the Defendants violated his due process rights under the Fourteenth Amendment. The Fourteenth Amendment applies only to state action and the Defendants are all federal agencies. U.S. Const. Amend. XIV § 2.

On this record, the Court cannot find a constitutional due process claim under the Fifth Amendment. “[W]hen the casting of a claim in constitutional terms is a mere ‘rhetorical cover’ for a claim for benefits that the door-closing statutes are intended to block, the suit fails.” *Czerkies v. United States Dep’t of Labor*, 73 F.3d 1435, 1442 (7th Cir. 1996). The complaint reveals that Mr. Roberts advanced his claims on multiple levels and on multiple occasions over twenty years. These facts demonstrate the lack of substantiality to his instant constitutional claim.

In his complaint, Mr. Roberts also posits an argument that OWCP violated a clear statutory mandate or prohibition under 5 U.S.C. § 8107(a) in denying his applications for workers’ compensation. However, § 8107(a) does not mandate that OWCP grant or deny an application for benefits, but rather sets forth scheduled compensation to which a person is entitled after a finding of “permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement.” 5 U.S.C. § 8107(a). As the Georgia court held, a federal district court does not have jurisdiction to consider whether OWCP’s decision that Mr. Roberts was not disabled and not entitled to benefits is wrong. Mr. Roberts’s allegations do not establish violation of a statutory mandate or prohibition, and he therefore has failed to cure the jurisdictional defect found by the Georgia court in *Roberts I*.

Conclusion

Because Mr. Roberts has failed to cure the jurisdictional defects cited by the Georgia court in its dismissal of his case, he is collaterally estopped from relitigating those claims in this Court. This Court is bound by the decision in *Roberts I* that a federal district court does not have subject matter jurisdiction to hear Mr. Roberts’s claims challenging the denials of benefits, and his claims arising under the Fifth Amendment and 5 U.S.C. § 8107(a) fail to state a claim upon which relief can

be granted. Therefore, the Defendants' Motion to Dismiss is granted. A separate Order will accompany this Memorandum Opinion.

ROSEMARY M. COLLYER
United States District Judge

Date: March 21, 2003